



**The Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Valentec Wells, Inc.

File: B-239499

Date: August 29, 1990

James V. Card for the protester.
Judy Sukol, Esq., and Piper Fuhr, Esq., Department of the Army, for the agency.
David Hasfurther, Esq., Robert C. Arsenoff, Esq., and John Brosnan, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Protester's generalized objections to agency decision to exercise a contract option in lieu of competing a requirement for ammunition links to maintain an industrial mobilization base do not demonstrate that the agency abused its discretion in exercising the option.

DECISION

Valentec Wells, Inc. protests the exercise of an option for 58,995,168 M13 ammunition links under contract No. DAAA09-89-C-0200 (contract 0200) between DynAmerica, Inc. and the Department of the Army. The protester principally objects to the agency's decision to exercise the option to maintain an industrial mobilization base and argues that the Army should have competed the option requirements.

We deny the protest.

In early 1989, Valentec and DynAmerica competed in a restricted competition for the M13 links conducted pursuant to 10 U.S.C. § 2304(c)(3) (1988), which allows military agencies to use other than competitive procedures in awarding contracts to a particular source or sources where such action is necessary to maintain a facility, producer, or other supplier available for furnishing property in case of a national emergency or to achieve industrial mobilization. As a result of that competition, in which DynAmerica submitted the low unit price of \$.020 for the base quantity, that firm was, on March 3, 1989, awarded contract 0200 for 55 percent of the Army's requirements of 181,607,938 links.

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According to the agency, Valentec was awarded the balance of the requirements at a higher price, \$.02152 per unit, because the Army determined that it was necessary to maintain at least two industrial mobilization base producers for the item so that the agency's cartridge supply line would not be shut down if one or the other supplier encountered delivery problems.

On April 3, 1990, the Army received a requisition for 58,995,168 additional M13 links. Following a price analysis, the agency decided, on April 12, to fulfill its requirements for these links by modifying contract 0200 with DynAmerica and exercising an option to purchase the additional quantity at the firm's option price of \$.019 per unit. At the time this decision was made, Valentec had submitted the low-priced offer under request for proposals (RFP) No. DAAA09-90-R-1263, of \$.0187 per unit for 75,069,000 links, and was in line for an award, which it eventually received on April 19.

In its protest, Valentec argues that the Army violated Federal Acquisition Regulation (FAR) § 17.207(d)(1) governing the exercise of contract options by failing to issue a new solicitation to test the market for the links prior to exercising DynAmerica's option, at a time when the agency knew that the protester would be awarded a contract for the same items at a basic price of \$.0187 per unit.^{1/}

In response, the Army reports that its decision to exercise the option under DynAmerica's existing contract at \$.019 per unit was based not only on price considerations, but on other factors, as permitted by FAR § 17.207(c). With respect to price, the agency notes that it was aware of the \$.003 difference in unit prices between DynAmerica's option price and Valentec's soon-to-be-awarded contract price, but that the potential "premium" of \$17,698 for the total quantity to be incurred by exercising the option would likely be outweighed by administrative considerations insofar as losing DynAmerica as a mobilization base producer (its other contract work was finished and Valentec was to be awarded the new contract) might necessitate \$64,000 in

^{1/} Valentec has also cast its arguments in terms of a failure to obtain full and open competition under FAR Part 6 and a failure to assure adequate price competition and perform an adequate price analysis under FAR subpart 15.8. These arguments are misplaced because they relate to requirements concerning contract award and not the exercise of options.

storage costs for deactivated government plant equipment used in making the links. The primary reason, however, for exercising the option was to maintain two industrial mobilization base producers in operation until early Fiscal Year 1991, when a new competitive procurement could be conducted between viable firms.

In its comments on the agency report, Valentec disputes the agency's assertion that the 1989 split award was made for mobilization base purposes and asserts that it was made only because DynAmerica could not handle the entire requirement for the links. In this regard, Valentec suggests that it can handle all of the agency's requirements. As to price, Valentec notes the "premium differential," and objects to the counterbalancing consideration of storage costs as a mere attempt to keep DynAmerica in business. Finally, Valentec generally disputes the agency's reported need to keep two mobilization base producers active, in light of its own predictions that future awards for the links in question would wane due to military budget considerations.

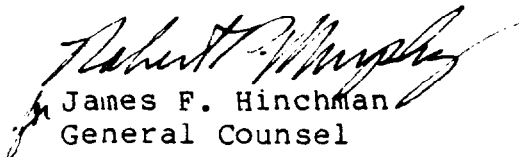
Our Office generally will not question the exercise of an option unless we find that the applicable regulations were not followed or that the agency's determination to exercise the option, rather than conduct a new procurement, was unreasonable. Kollsman Instrument Co., 68 Comp. Gen. 303 (1989), 89-1 CPD ¶ 243. While it may be appropriate in certain circumstances for a contracting officer to contact all available sources or to issue a solicitation to determine whether an option price is most advantageous, neither procedure is mandated by regulations, and contracting officers have discretion in determining what constitutes a reasonable check on prices in the market. FAR § 17.207(d). Id.

Decisions involving what producers should be included in the mobilization base and restrictions required to meet the needs of industrial mobilization involve complex judgments which are generally best left to the discretion of military agencies. Minowitz Mfg. Co., B-228502, Jan. 4, 1988, 88-1 CPD ¶ 1. This Office will question those decisions only if the record convincingly shows that the agency has abused its discretion. Martin Elec., Inc., 65 Comp. Gen. 59 (1985), 85-2 CPD ¶ 504. We limit our standard of review in such cases because the normal concern of maximizing competition, as the protester here urges, is secondary to the needs of industrial mobilization, even in circumstances where a price premium will be paid as a result of a particular procurement action taken to ensure an adequate mobilization base. Minowitz Mfg. Co., B-228502, supra.

The Army's decision to consider a factor other than price, such as the need to maintain a mobilization base producer, in determining whether or not to exercise DynAmerica's option rather than compete the requirement was entirely consistent with the regulations which state that the agency is to consider price "and other factors" in determining whether to exercise an option. See FAR §§ 17.207(c)(3); 17.207(e) which state that "other factors" include such matters as the government's need for continuity of operation.

An examination of the record reveals little more than the protester's general disagreement with the Army's reported need to maintain two mobilization base producers. The protester has provided no support for its contention that the earlier split award, from which it benefited as the high offeror in 1989 as the result of agency's mobilization base decision, was the result of DynAmerica's inability to handle the agency's full requirements. The fact that Valentec disagrees with the Army's judgment with respect to a continuing need to maintain a mobilization base of at least two M13 link suppliers does not demonstrate that the Army abused its discretion in not competing the option requirements at issue. Minowitz Mfg. Co., B-228502, supra. Thus, it is our view that the agency properly considered mobilization base needs in determining to exercise the option pursuant to FAR § 17.207.

Accordingly, the protest is denied.


James F. Hinchman
General Counsel